

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Cr. R. No. 90 of 2009

Reserved on: 4.12.2009

Decided on: 10.12.2009

Vinay Kumar

.....Petitioner

Versus

State of H.P.

.....Respondent

Coram

The Hon'ble Mr. Justice V.K. Ahuja, J.

Whether approved for reporting ?¹ Yes

For the petitioner : Mr. M.S. Guleria, Advocate.

For the respondent : Mr. J.S. Guleria, Assistant A.G.

V.K. Ahuja, J.

This revision petition has been filed by the petitioner, under Section 397 readwith Section 401 Cr.P.C. against the judgment of the Court of the learned Additional Sessions Judge, Una dated 23.5.2009, passed in Criminal Appeal No. 48/2008, wherein the appeal of the petitioner filed under Section 341 of Cr.P.C. was dismissed against the order passed by learned Judicial Magistrate Ist Class, Court No. 1, Amb.

Briefly stated the facts of the case are that one Lakhbir Singh had filed a complaint under the provisions of

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*

Sections 341, 323, 325, 506 readwith Section 34 of IPC against several persons which was pending trial before the learned Judicial Magistrate Ist Class, Amb. On 7.3.2008, an application was moved on behalf of the complainant Lakhbir Singh, through his counsel, for taking up the case before the date fixed of hearing alleging that as the accused were his neighbours and to maintain cordial relations, they have compromised the matter. On the same day, an application was also moved seeking permission to compound the case. A compromise deed allegedly signed by complainant Lakhbir Singh was also produced before the Court. The case was allowed to be compounded by the learned trial Court. However, on a subsequent date, i.e. 11.3.2008 the complainant Lakhbir Singh filed an application before the Court that the accused Charan Dass alongwith others had produced a false and forged compromise on his behalf which compromise was never signed by him. It was alleged that the accused produced the document for their own benefit and cheated the complainant and he, therefore, prayed that suitable action be taken against the accused persons, under Section 420 and 467 of IPC.

In pursuance of the complaint so filed, the court instituted an inquiry and on completion of the same it came to the conclusion that the present pettioer and other persons have committed offences punishable under Sections 181, 193, 199, 200, 205, 416/419, 463, 165 read with Section 120-B, 107 and 108 of the Indian Penal Code. He thereafter, directed that a complaint be filed on the basis of the inquiry before the learned Chief Judicial Magistrate, Una.

Aggrieved by the such directions given by the Court, the petitioner filed an appeal before the Court of Learned Sessions Judge, Una and the said appeal was decided by the Additional Sessions Judge, Una vide his impugned judgment dated 23.5.2009. Being aggrieved by the dismissal of the appeal, the petitioner has filed the present revision petition.

I have heard the learned counsel for the parties and have gone through the record of the case.

The main submissions made by the learned counsel for the appellant were that the alleged compromise was not effected in the Court but it was already reduced into writing as alleged by the complainant and thereafter, the same was produced in the Court. Thus, it was submitted that the Court could not have taken cognizance under Section 195 Cr.P.C. but it could have been taken on a private complaint filed by the complainant and therefore, the order passed for filing the complaint before learned CJM, Una is liable to be set-aside.

To substantiate his plea, learned counsel for the petitioner had relied upon the decision of the Apex Court in ***Iqbal Singh Marwah and another vs Meenakshi Marwah and another, AIR 2005 Supreme Court 2119***. The observations made in para-25 were relied upon, which reads as under:-

“Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provisions have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis.”

On the strength of the above observations made by the learned trial Court, learned counsel for the petitioner had submitted that only a private complaint could have been filed by the complainant and no proceedings under Section 195 of Cr.P.C. could have been initiated.

To substantiate his plea further, learned counsel for the petitioner had also relied upon a decision of this Court in ***Munshi Ram vs Shyam Lal & Ors., 2008 CRI. L.J. 4605.*** The observations made in para-9, which were relied upon may be reproduced as under:-

“In the present case, the forgery is alleged to have been committed with respect to the Will in question prior to the filing of the suit in the civil Court, therefore, the view taken by the Courts below is wrong, accordingly the petition is allowed. Consequently, both the orders passed by the learned Judicial Magistrate and the learned Sessions Judge dated 5-3-2002 and 12-8-2003 respectively are set aside. The complaint No. Cr. Case No. 75/2 of 2001 titled Munshi Ram v. Shyam Lal and others, is remanded back to the learned Chief Judicial Magistrate, Bilaspur, for recording preliminary evidence on a date to be fixed by him and thereafter decide the matter in accordance with law.”

The above decision deals only with the question that the complaint filed at the instance of the petitioner cannot be dismissed on the ground that it should have been filed at the instance of the civil Court which is not the question before this Court.

On the other hand, learned Assistant Advocate General had submitted that the provisions of Section 195 Cr.P.C. are clearly attracted to the present facts and in case a forged document had been produced during the proceedings of

the case, the complaint was cognizable by the Court which was rightly filed under Section 195 of Cr.P.C.

Section 195 Cr.P.C. deals with three distinct categories of offences, as has been discussed in the above case of Iqbal Singh Marwah (supra). These relates to:-

- i) contempt of lawful authority of public servants,
- ii) offences against public justice; and
- iii) offences relating to documents given in evidence.

The observations made in the above case in para-10 are relevant and may be re-produced:-

“Sections 340 and 341 Cr.P.C. which occur in Chap. XXVI give the procedure for filing of the complaint and other matters connected therewith. The heading of this Chapter is ‘Provisions as to Offences Affecting the Administration of Justice’. The fact that the procedure for filing a complaint by Court has been provided in Chap. XXVI dealing with offences affecting administration of justice, is a clear pointer of the legislative intent that the offence committed should be of such type which directly affects the administration of justice, viz., which is committed after the document is produced or given in evidence in Court.”

It is clear from a bare perusal of Section 340 Cr.P.C. that the alleged forged document should have been produced or given in evidence in Court. The said Court after such preliminary inquiry, if any, has itself think necessary, may record a finding to that effect, make a complaint, therefore, in writing, sent it to a Magistrate Ist Class having jurisdiction. It is, therefore, clear that the provisions of Section 340 Cr.P.C. are clear that the document should have been produced or given in evidence in a proceeding in that Court. The fact that the document was produced in the Court is clear from the facts of the case which are not in dispute and the said compromise had

been produced allegedly by the complainant by forgery and it is to be considered by the Court if the forgery was committed and by whom. The learned trial Court had also conducted preliminary inquiry and recorded findings and thereafter, filed complaint. It is not necessary that the document should have been forged in the Court or a forged document cannot be placed in the Court before any action is taken under Section 340 of Cr.P.C. A bare perusal of the provisions of Section 340 Cr.P.C. clearly shows that the action could be taken by the Court and accordingly the complaint was rightly filed by the learned Magistrate after conducting a preliminary inquiry. The learned Additional Sessions Judge has given its findings on the question by a well reasoned judgment and I find no reason to disagree with the findings recorded by the learned Additional Sessions Judge dismissing the appeal preferred by the petitioner.

In view of the above discussion, I find that there is no merit in the revision petition filed by the petitioner, which is dismissed accordingly. The parties through their counsel are directed to put appearance before learned trial Court on 30.12.2009 and the learned trial Court shall proceed with the case in accordance with the law.

A copy of this judgment alongwith record be returned to the learned trial Court.

(V.K. Ahuja), J.

December 10, 2009
(vs)